IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 363 OF 2002

Mahendra Ganpatlal Kacchara ...Appellant

Versus

Naresh Mahadeo Shirodkar & Ors ...Respondents

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Mr. S.V. Marwadi, Advocate for Appellant

Mr. Y.S. Shinde, A.P.P. for State.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 25TH JULY, 2005

P. C.:-

1. Heard both sides.

2. The appellant i.e. original complainant in Sessions Case No. 1269 of 1996 has preferred this appeal for return of property i.e. cash of Rs.89,000/-. The said case pertains to C.R. No.341 of 1994 of V.P. Road police station. The said case is mainly under Section 395 and 397 of I.P.C.

3. Some time before the trial was concluded, the appellant had preferred an application before the trial for return of property i.e. cash of Rs.89,000/-. The learned Sessions Judge stated that the said application will be decided at the time of

final judgment. However, at the time of final judgment, the learned Sessions Judge has observed that as the recovery was after very long time and especially when the complainant never reported the matter that his property was stolen and looted, the said cash cannot be said to be the cash looted in the dacoity, therefore, the said cash recovered shall stand forfeited to the State.

4. The reasoning of the learned Sessions Judge appears to be totally incorrect and contrary to the record. From the contents of the F.I.R. it is seen that the complainant has mentioned about Rs.1,02,000/- being robbed during the incident. He has given details of the currency notes amounting to Rs.1,02,000/-. So also he has deposed about this aspect in his evidence in para 3 and he has also identified the cash. From the evidence on record as well as the judgment of the learned Sessions Judge it is clear that on 29.9.1994 cash of Rs.25,000/- was recovered from one Soma Jadhav at the instance of accused No.5 Naresh who had handed over the cash which was part of stolen booty. It is further clear that accused No.4 Padmanabhan also made disclosure and pursuant to that disclosure cash of Rs.12,000/- was recovered from Pravin, brother of accused Naresh. From accused Naeem cash of Rs.50,000/- was recovered from his house on 2.10.1994. One Keshav Shetty was

also found involved in this crime. Prosecution also claims recovery of cash of Rs.2000/- from him on 19.10.1994.

5. Thus, it is seen that cash of Rs.89,000/- was recovered at the instance of the accused persons in the said case. None of the accused have claimed the cash in the said case nor any other person has claimed the cash. On the other hand, the complainant has clearly stated about being robbed the amount of Rs.1,02,000/-, the details of which have been given by him in his F.I.R. as well as in his evidence before the Court. In this view of the matter, the observations made by the learned Sessions Judge as quoted above are entirely incorrect and consequently the order passed in relation to the return of property deserves to be set aside.

6. In this view of the matter, the order relating to the return of property i.e. cash of Rs.89,000/- is set aside. It is directed that the amount of Rs.89,000/- be returned to the appellant herein i.e. original complainant.

7. Appeal is disposed of.

8. Office to issue an authenticated copy of this order to the parties.

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